

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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APPLETON PAPERS, INC. and  
NCR CORPORATION,

Plaintiffs,

v.

Case No. 08-C-16

GEORGE A. WHITING PAPER COMPANY,  
P.H. GLATFELTER COMPANY and  
MENASHA CORPORATION,

Defendants.

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**ORDER GRANTING MOTION FOR LEAVE  
TO FILE BRIEF OF AMICUS CURIAE**

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Plaintiffs Appleton Papers, Inc. and NCR Corporation filed this action concerning the allocation of costs and damages arising out of efforts to remediate the polychlorinated biphenyl (“PCB”) contamination of the Lower Fox River and Green Bay in Wisconsin (“Lower Fox River Contamination”) under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.* Several defendants have filed motions to dismiss Counts I and III of the third amended complaint. By its order of April 28, 2008, the court indicated that it would withhold ruling on the pending motions to dismiss in order to allow the United States to determine whether it wished to seek leave to file a brief as *amicus curiae*, noting that the United States has a substantial interest in the matter before the court and the issues raised by the defendants’ motions. The United

States has now filed motion seeking such leave and permission to file an oversized brief. The United States' motion is hereby **GRANTED**.

The plaintiffs, although they have taken no position as to the United State's motion, emphasize in their response that an *amicus curiae* "must be a friend of the court and not a friend of a party to the cause." *Leigh v. Engle*, 535 F. Supp. 418, 420 (N.D. Ill. 1982) (holding that the function of an *amicus curiae* "is to advise in order that justice may be done, rather than to advocate a point of view so that a cause may be won by one party or another." *Id.*). They request that if the United States is granted leave to file its proposed brief, they be provided an opportunity to file a response within twenty-one days of its acceptance by the court.

Having briefly reviewed the proposed brief, the court is satisfied that it will assist the court in resolving the important issues before it. The United States has a substantial interest in the interpretation of CERCLA and litigation arising under its provisions as it relates to the protection of public health and the environment through the cleanup of hazardous waste sites. The United States, through its agencies, administers the program for the cleanup of environmentally contaminated sites around the country under CERCLA, and is charged with responsibility for assessing and pursuing recovery of damages under CERCLA for injuries to natural resources caused by releases of hazardous substances at such sites. It has filed enforcement actions against, and/or entered into settlements with, a number of the parties to this action. While it is true that certain of the parties and the *amicus* may be aligned in some of their positions, the perspective and arguments of the United States are sufficiently separate and distinct to warrant the court's consideration. Granting the motion will not result in unreasonable delay. All parties will have the opportunity to respond the United States' brief within twenty-one days of the date of this order.

The United States is further granted leave to file its brief in excess of the page limitations that would otherwise be applicable, in light of the complexity of the issues it addresses and its presentation of pertinent background information concerning CERCLA and the Lower Fox River Contamination at issue in this case.

**SO ORDERED** this 3rd day of June, 2008.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge